

Al Smith

EXHIBIT

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2012 STATE LIABILITY SYSTEMS SURVEY ■ OVERVIEW

The 2012 State Liability Systems Ranking Study was

conducted for the U.S. Chamber Institute for Legal Reform to explore how fair and reasonable the states' tort liability systems are perceived to be by U.S. businesses. Participants in the survey were comprised of a national sample of 1,125 in-house general counsel, senior litigators or attorneys, and other senior executives who indicated that they are knowledgeable about litigation matters at companies with at least \$100 million in annual revenues. The 2012 ranking builds on previous years' work,¹ where in each survey year all 50 states are ranked by those familiar with the litigation environment in that state. Prior to these rankings, information regarding the attitudes of the business world toward the legal systems in each of the states had been largely anecdotal. The State Liability Systems Ranking Study aims to quantify how corporate attorneys view the state systems.

Approximately half of all senior attorneys (49%)² view the fairness and reasonableness of state court liability systems in America as excellent or pretty good, up from 44% in the 2010 survey. The remaining 51% view the systems as only fair or poor, or declined to answer (1%). **The impact of a state's litigation environment has always been and continues to be important, with more than two-thirds (70%) reporting that it is likely to impact important business decisions** at their companies, such as where to locate or do business. This is an increase from 67% in 2010 and 63% in 2008.

Respondents were first screened for their familiarity with states, and those who were very or somewhat familiar with the litigation environment in a given state were then asked to evaluate that state. It is important to remember that **courts and localities within a state may vary a great deal** in fairness and reasonableness. However, respondents had to evaluate the state as a whole. To explore the detailed nuances within each state would have required extensive questioning about each state and was beyond the scope and purpose of this study. Other studies have also demonstrated this variability within a

¹ 2010, 2008, 2007, 2006, 2005, 2004, 2003, and 2002.

² Differences between this value and those on the line graph on p. 5 are due to rounding.

Table 45

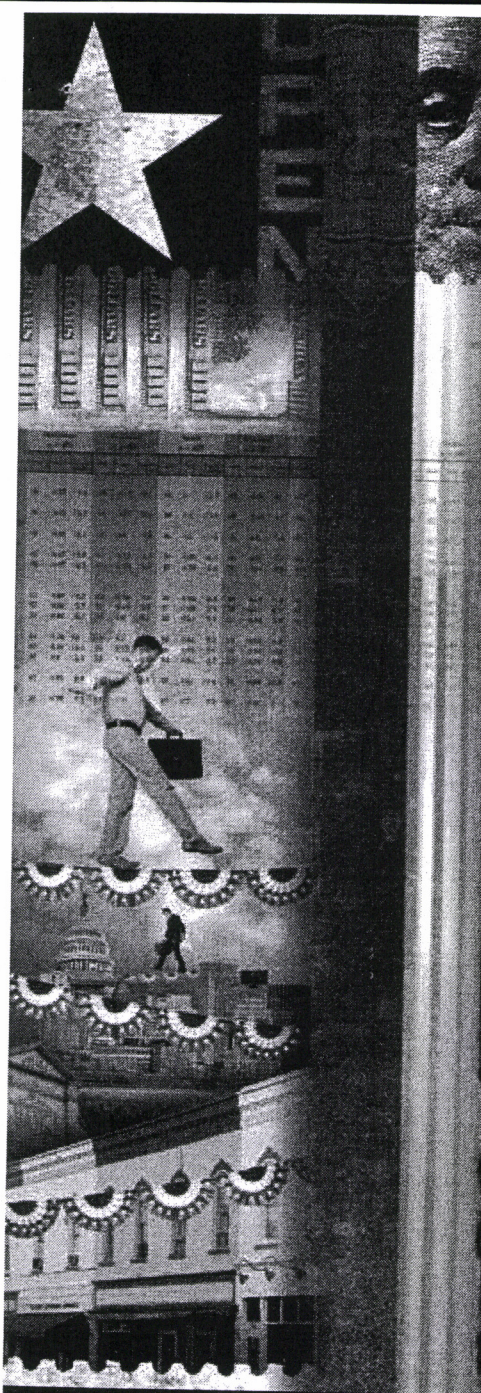
Montana

2012 Overall Ranking: 45

Ratings on Key Elements of State Liability Systems (n=51)

		"A"	"B"	"C"	"D"	"F"	Mean Grade	Ranking Within Element
Having and Enforcing Meaningful Venue Requirements	%	9	39	17	11	7	3.4	42
Overall Treatment of Tort and Contract Litigation	%	7	31	26	11	20	2.9	46
Treatment of Class Action Suits and Mass Consolidation Suits	%	13	22	20	6	9	3.3	32
Damages	%	13	20	28	15	17	3.0	42
Timeliness of Summary Judgment or Dismissal	%	9	37	20	15	13	3.2	40
Discovery	%	11	20	35	13	15	3.0	50
Scientific and Technical Evidence	%	9	19	33	20	4	3.1	46
Judges' Impartiality	%	19	17	31	13	15	3.1	46
Judges' Competence	%	15	26	28	17	9	3.2	46
Juries' Fairness	%	13	26	24	9	17	3.1	44
Overall State Grade	%	6	33	24	22	13	3.0	46

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SMALL BUSINESS PROBLEMS & PRIORITIES

Holly Wade

TABLE I CONTINUED
MEASURES OF SMALL BUSINESS PROBLEM IMPORTANCE

Problem	Rank	Mean	Standard Deviation	Percent "Critical"	Percent "Not a Problem"	2008 Rank
Delinquent Accounts/Late Payments	46	4.30	2.02	10.5	19.9	(modified) 45
Sales Too Dependent on Health of One Business or Industry	47	4.33	2.00	10.7	21.0	43
Locating Business Help When Needed	48	4.43	1.88	7.9	18.5	36
Training Employees	49	4.55	1.84	5.6	20.6	41
Using Computer(s), the Internet or New Technology Effectively	50	4.56	1.92	7.6	22.4	48
Rules on Retirement Plans	51	4.64	1.96	7.7	25.5	52
Minimum Wage/"Living" Wage	52	4.73	2.01	8.6	28.8	53
Anti-Competitive Practices, e.g., Price Fixing	53	4.76	1.94	8.2	26.2	59
Zoning/Land Use Regulations	54	4.77	2.02	8.8	29.4	54
Handling Business Growth	55	4.78	1.77	4.3	23.5	49
Obtaining Long-Term (5 years or more) Business Loans	56	4.81	2.13	11.5	33.5	73
Bad Debts (not delinquencies) and/or Bankruptcies	57	4.83	1.95	7.0	27.8	56
Obtaining Short-Term (less than 12 months or revolving) Business Loans	58	4.86	2.12	10.8	34.3	72
Traffic, Highways, Roads, Bridges	59	4.90	1.97	7.4	31.4	58
Crime, including Identity Theft, Shoplifting, etc.	60	4.96	1.88	6.2	28.6	57
Solid and Hazardous Waste Disposal	61	4.96	1.96	6.2	33.1	64
Interest Rates	62	4.99	1.94	7.4	31.0	32
Cyber Crime (viruses, hacking, etc.)	63	5.00	1.86	5.5	29.2	new
Mandatory Family or Sick Leave	64	5.04	1.97	7.8	35.1	60
Competition from Internet Businesses	65	5.10	2.00	7.3	36.9	69
Credit Rating/Record Errors	66	5.10	1.89	5.3	33.9	67
Protecting Intellectual Property	67	5.10	1.84	4.7	33.8	62
Competition from Imported Products	68	5.14	2.09	9.3	41.9	66
Winning Contracts from Federal/State/Local Governments	69	5.19	2.04	7.5	43.6	71
Using Social Media to Promote Business (Facebook, Twitter, etc.)	70	5.19	1.83	4.4	36.8	new
Costs and Frequency of Lawsuits/Threatened Lawsuits	71	5.20	2.00	7.9	38.9	(modified) 65
Employee Turnover	72	5.35	1.80	4.0	38.7	51
Access to High-Speed Internet	73	5.49	1.98	7.0	51.3	74
Undocumented Workers	74	5.67	1.90	6.5	55.2	(modified) 70
Exporting My Products/Services	75	5.97	1.60	2.5	60.3	75



FOREWORD

This is the eighth edition of *Small Business Problems and Priorities*. The first edition was published in 1982 followed by editions in 1986, 1991, 1996, 2000, 2004 and 2008. The volumes are among the NFIB Research Foundation's most popular publications and therefore have become a staple. Current plans project a ninth edition to be published in the spring of 2016.

This publication is based on a research procedure that has remained fundamentally unchanged from the beginning. A large sample of small-business owners, all members of the National Federation of Independent Business (NFIB), is sent a mail questionnaire.¹ The questionnaire presents 75 potential business problems, public policy related and not. Respondents are asked to rate the severity of each potential problem on a scale of 1 to 7 anchored by "Critical Problem" on one end and "Not a Problem" on the other.

The array of potential problems presented to small-business owners for evaluation has undergone minor changes over the years to account for shifts in business conditions, technologies, and expressed concerns. The 2012 survey substituted six new potential problems for six that elicited minimal interest in previous editions. The wording was changed on eight problems for greater clarity. Still, the list of potential business problems assessed in 2012 closely resembles the list produced in prior years. The publication format is also similar in all editions.

The publications begin with an overview of results from the total population of small-business owner respondents. They then examine the most important problems, the least important problems, problems on which there is most and least consensus, the relative importance of various problems clustered by topic, changes in ranking from prior surveys, etc. The bulk of the publications review owner assessments of the problem list, with respondents divided by standard owner and firm classifications, such as employment size and industry.

The purpose of this research is twofold. First, the survey and publication establish the relative importance of small-business owner concerns and thereby a de facto issues priority list for NFIB. The organization uses this list to help prioritize advocacy efforts to best reflect the concerns of the membership. NFIB was founded on the principle that the membership governs. Policy positions are established by member vote rather than by committee or other means. *Problems and Priorities* is designed to help accomplish that objective.

A second purpose for conducting the survey is to provide parties outside NFIB an accurate list of small-business owner concerns. Assertions are often made regarding the problems and interests of small-business owners with little or no empirical evidence to support them. If there is no systematically collected data to establish a benchmark, these assertions can mislead and attribute interest when none exists (and vice versa). The data in *Problems and Priorities* therefore provide a standard against which others can measure their impressions.

It is important to note that *Problems and Priorities* focuses on problems, not solutions. The survey is intended to establish the relative importance of business problems as small-business owners see them. It is not intended to develop solutions or to argue for one solution over another. A problem list can suggest that certain problems should be addressed which can indirectly imply a solution. But the data and arguments for a particular solution to a problem and establishing the problem are separate issues.

¹ This procedure differs from most surveys produced by the NFIB Research Foundation. Most are conducted across a nationally representative sample of small employers. The other exception is NFIB's *Small Business Economic Trends Survey*. It also uses samples from the NFIB membership.



Problems and Priorities has three characteristics that make it unique. The first is that the survey has a large number of respondents. In all, 3,856 small-business owners returned useable questionnaires out of 23,000 surveys mailed. The sizable response allows break-outs into a large number of respondent categories or groups with adequate returns to analyze and compare them. It is thereby possible and appropriate to note where the responses of those in different categories or groups vary from the population and among each other.

The second characteristic making the study unique is that most surveys of this genre are limited to comparatively few problems. *Problems and Priorities* lists 75 problems for evaluation. The list includes two basic types of problems; those heavily influenced by government including various types of taxes and regulations, and problems more associated with the operations side of the business including the owners' ability to manage their time and keeping up with market trends. The combination provides broad context and allows observers and analysts a better understanding of the relative importance of problems affecting small-business owners that are internally and externally generated.

Finally, the sample for this study is one of the most representative groups of small-business owners used to produce problem rankings and priorities.² Many published surveys of this nature confine themselves to particular segments of the small-business population. Focusing on one component is not debilitating for the survey per se. It simply warrants caution and appreciation for what the survey does and does not represent. A brief comparison between respondents and the small-business population produced by administrative records of federal agencies can be found in the Appendix. There are two major variances between the small-business population and the NFIB population. First, the NFIB population includes farmers and related businesses whereas the Census does not. Also, NFIB members are more populated in the interior states and are less represented on the East and West coasts compared to the general population.

The data for *Problems and Priorities* are presented in 13 tables. The tables constitute the most important part of the publication. Commentary is intended to point out differences and patterns of differences in the tables that may not be immediately obvious to the reader.

Special mention must be made of NFIB personnel, particularly those in Mail and Supply, who participated in this project. This publication would not have been possible without their capable hard work. It is recognized and appreciated.

Copies of *Small Business Problems and Priorities* can be obtained from the NFIB Research Foundation located at 1201 "F" Street, NW, Suite 200, Washington, D.C., 20004.

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² Periodically, the NFIB Research Foundation will Sponsor a survey comparing the policy views of a nationally representative sample and a NFIB member sample. They are very close on virtually all issues. The latest was conducted for the Foundation by Mason-Dixon Polling and Research and can be found at <http://www.nfib.com/Portals/0/PDF/AllUsers/research/Opinions%20of%20NFIB%20Members%20and%20the%20Small%20Business%20Population.pdf>.